

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs January 29, 2008

**STATE OF TENNESSEE v. JEREMY RAY HINES**

**Direct Appeal from the Circuit Court for Blount County  
No. C-16056    Jon Kerry Blackwood, Judge**

---

**No. E2007-00963-CCA-R3-CD - Filed April 11, 2008**

---

The appellant, Jeremy Hines, pled guilty in the Blount County General Sessions Court to simple possession of marijuana, a Schedule VI controlled substance, and received a \$500 fine and a suspended sentence of eleven months and twenty-nine days in incarceration. The appellant was placed on supervised probation, which was revoked in June 2006 for his failure to pay fines and costs. The appellant appealed this revocation to the Blount County Circuit Court, which extended his suspended sentence. The circuit court placed the appellant on supervised probation following a brief period of incarceration and reserved jurisdiction over the appellant's probation. In November 2006, the circuit court revoked the appellant's probation for drug use, ordered him to serve a brief jail term, and returned him to supervised probation. In April 2007, the circuit court again revoked his probation and ordered that he serve the remainder of his sentence in confinement. On appeal, the appellant claims that the circuit court erred by revoking his probation. Pursuant to the plain error doctrine, we conclude that the circuit court lacked jurisdiction over the supervision of the appellant's probationary sentence. Therefore, we vacate the circuit court's revocation order and remand the case to the circuit court for further proceedings consistent with this opinion.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Vacated and Remanded.**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which J. CURWOOD WITT, JR., and ALAN E. GLENN, JJ., joined.

Mack Garner, Maryville, Tennessee, and J. Liddell Kirk, Knoxville, Tennessee, for the appellant, Jeremy Hines.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; Michael L. Flynn, Jr., District Attorney General; and Clinton Frazier, Assistant District Attorney

General, for the appellee, State of Tennessee.

## OPINION

### **I. Factual Background**

The record reflects that on March 18, 2005, the appellant was arrested for felony possession of a Schedule VI controlled substance. On July 15, 2005, he pled guilty to simple possession and received a \$500 fine and a suspended sentence of eleven months and twenty-nine days. The General Sessions Court judge placed the appellant on supervised probation with the special condition that he complete a drug and alcohol assessment. On June 9, 2006, the General Sessions Court revoked his suspended sentence for failure to pay fines and costs and ordered that he begin serving eleven months and twenty-nine days in jail, which sentence was to be suspended upon payment of fines and costs. The appellee appealed this order to the Blount County Circuit Court, which ordered that he serve twenty-eight days in jail and extended his suspended sentence for eleven months and twenty-nine days, beginning on June 9, 2006, to be served on supervised probation. In its July 7, 2006 Supplemental Probation Order, the circuit court stated that “[j]urisdiction of this probation is specifically reserved.”

On October 11, 2006, a Probation Violation Report issued, alleging that the appellant had tested positive for THC<sup>1</sup> and had admitted use of marijuana and hydrocodone. The circuit court again revoked the appellant’s probation and ordered him to serve thirty days in jail, after which he was to resume supervised probation and to complete an alcohol and drug assessment within thirty days. A Probation Violation Report issued on March 28, 2007, alleging that the appellant had failed to obtain an alcohol and drug assessment and to pay court costs or fees. The circuit court permitted the State to amend the violation warrant to add that the appellant also failed to maintain employment and to pay court costs monthly as required.

At the April 30, 2007 Probation Violation Hearing, Carolyn Brewer, the appellant’s probation officer, testified that she began supervising the appellant on July 7, 2006. She first referred the appellant for a drug assessment after a positive drug test in September 2006. Although the appellant had admitted to her that he also smoked marijuana in August, he failed to have the recommended assessment. A violation warrant was prepared in October 2006, which resulted in the revocation of his probation for drug use. At that time, the trial court ordered the appellant to get a drug and alcohol assessment within thirty days of his release from jail. The appellant had a drug test on November 30, 2006, that was positive for marijuana use, and he admitted to Brewer that he had smoked marijuana on November 26, which was only three days after his release from jail. She stressed to the appellant the importance of getting the drug assessment then and also warned him to obtain the assessment when she met with him in February and March 2007. At their last meeting, the appellant told her that he had lost the phone number of the assessment facility and did not think to call Brewer

---

<sup>1</sup>THC or tetrahydrocannabinol is “the primary intoxicant in marijuana.” The American Heritage Dictionary 1257, 1259 (2d ed. 1985).

to get it.

Brewer also testified that on April 5, the appellant called her and told her that he had been fired from his job at the Tennessee Ice Company because of rumors that he had threatened to hurt his boss. That same day, Brewer called the appellant's boss, who said he fired the appellant for failing to report to work and for arriving to work late after the crew had already left. Brewer said that since the appellant's release from jail in November, he had made a single \$20 payment in February toward the almost \$1200 he owed in costs and fees in this case. Brewer did not believe that the appellant was a good candidate for probation because he did not "seem to be taking it seriously[.]" On cross-examination, Brewer agreed that the appellant had been reporting to her monthly as required, had not had a drug test since November 30, and had not gotten any new criminal charges of which she was aware.

Jeremy Hines testified that he was thirty years old, single, and lived alone in Greenback, Tennessee. He did not have any children, and he previously worked for the East Tennessee Ice Company as a truck laborer, earning \$7.50 hourly. He was called to his boss's office one day after work, and his boss said he had heard a rumor that the appellant had threatened to hit him on the head with a hammer. The appellant denied the rumor, but his boss gave him a week off from work to think about the situation. He returned to work on March 23 and was fired. He had been looking for a new job since that time.

The appellant testified that in addition to this case, he owed \$300 on a case in General Sessions Court. He had given his mother money to make payments on his court costs while he was at work and believed that she had made payments totaling \$100 on his general sessions case rather than on this case. The appellant testified that he had set up an appointment for the drug assessment, but then he either had to work overtime or his car had broken down. If allowed to remain on probation, he could have the drug assessment within a week. He had not used marijuana since he was last in court. He acknowledged that he had not taken his probation seriously in the past but said that since he had gone to jail in November, he did take it seriously. On cross-examination, the appellant testified that when Brewer first asked him to get a drug assessment in August 2006, she told him that assessment would be free. He agreed that he had a drug problem.

The trial court noted that the clerk's records showed that the appellant's last payment on his court costs in this case was for \$19 on September 6. The trial court revoked the appellant's probation and ordered that he serve the remainder of his sentence in confinement.

## **II. Analysis**

The appellant contends that the trial court erroneously revoked his probation and that its order that he serve the remainder of his sentence in incarceration was excessive. The State maintains that the record contains ample evidence to support revocation of the defendant's probation in that he failed to get a drug assessment as ordered, failed to pay his court costs, and failed to maintain gainful employment. Although the issue was not raised by the parties, we hold that the circuit court's

attempt to retain jurisdiction over the supervision of the appellant's probation constitutes plain error.

Tennessee Rule of Criminal Procedure 52(b) provides that “[w]hen necessary to do substantial justice, an appellate court may consider an error that has affected the substantial rights of an accused at any time, even though the error was not raised in the motion for a new trial or assigned as error on appeal.” See also Tenn. R. Evid. 103(d). We may only consider an issue as plain error when all five of the following factors are met:

(a) the record must clearly establish what occurred in the trial court; (b) a clear and unequivocal rule of law must have been breached; (c) a substantial right of the accused must have been adversely affected; (d) the accused did not waive the issue for tactical reasons; and (e) consideration of the error is “necessary to do substantial justice.”

State v. Adkisson, 899 S.W.2d 626, 641-42 (Tenn. Crim. App. 1994) (quoting Tenn. R. Crim. P. 52(b)) (footnotes omitted); see also State v. Smith, 24 S.W.3d 274, 283 (Tenn. 2000) (adopting the Adkisson test for determining plain error). Furthermore, the “ “plain error” must be of such a great magnitude that it probably changed the outcome of the trial.” Adkisson, 899 S.W.2d at 642 (quoting United States v. Kerley, 838 F.2d 932, 937 (7th Cir. 1988)).

Parties may appeal adverse decisions of the general sessions court to the circuit court, which must review the issues raised *de novo*. Tenn. Code Ann. § 27-5-108(a), -(c). In conducting its *de novo* review, the circuit court “must try the matter *and render judgment* as if no judgment had previously been rendered.” State v. Cunningham, 972 S.W.2d 16, 18 (Tenn. Crim. App. 1998) (reviewing hearing held by circuit court upon appeal of probation revocation from municipal court). This court has recently addressed the issue of whether a circuit court can retain supervisory authority over an appellant's probation after an appeal of the general sessions court's probation revocation. State v. Dorothea Annette Jones, No. E2006-02469-CCA-R3-CD, 2007 WL 4460142, \*2 (Tenn. Crim. App. at Knoxville, Dec. 20, 2007). In Jones, the court held that although the circuit court must essentially re-sentence the appellant as if there were no prior judgment in the case, it is still acting as an appellate court. Id. As such, it “may affirm, reverse, or modify the general sessions court's decision. However, following review, the circuit court is to remand the case to the general sessions court for enforcement of [its] ruling.” Id. (citing State v. Donnie Moore, No. W2003-01581-CCA-R3-CD, 2004 WL 1567125, at \*2 (Tenn. Crim. App. at Jackson, July 12, 2004). Accordingly, the Jones court vacated the circuit court's order revoking probation on a subsequent violation warrant. Id.

The probation statute itself supports application of the Jones holding in the present case. Tennessee Code Annotated section 40-35-303(b) empowers a court to place eligible defendants on probation at the conclusion of the sentencing hearing. “The powers granted in this section shall be exercised by the judge of the trial court presiding at the trial of original conviction, or by any successor judge holding court in that jurisdiction.” Tenn. Code Ann. § 40-35-303(g). In the present case, the trial judge presiding at the time of the appellant's conviction pursuant to a guilty plea was

the general sessions court judge. Here, the appellant timely appealed his initial probation revocation to the circuit court. In its July 7, 2006 order, the circuit court found that the appellant had violated his suspended sentence by failing to pay fines and costs, ordered him to serve twenty-eight days in jail, and extended his suspended sentence to June 8, 2007. At this point, the circuit court should have remanded the case to the general sessions court for enforcement of its order. See Jones, No. E2006-02469-CCA-R3-CD, 2007 WL 4460142, at \*3. Instead, it also entered a Supplemental Probation Order, setting the terms of the appellant's probation and reserving jurisdiction over the appellant's probation. Like in the Jones case, "the circuit court was without the authority to retain jurisdiction of the case following its appellate ruling." Id. The general sessions court had jurisdiction over the supervision of the appellant's probation and any subsequent violations thereof. Thus, the Blount County Circuit Court lacked jurisdiction to rule on the appellant's April 2007 violation warrant.

### **III. Conclusion**

Based upon our review of plain error in the record, we vacate the Blount County Circuit Court's May 2, 2007 order revoking the appellant's probation and remand the case to the circuit court for further proceedings consistent with this opinion.

---

NORMA McGEE OGLE, JUDGE